

III. STATEMENT OF ELIGIBILITY

5. The Commissioner has determined that the application submitted by Applicant is complete and that Applicant is eligible to participate in the voluntary remediation program established under IC 13-25-5. However, neither the Commissioner's determination of eligibility nor the entry into this Agreement precludes any finding by the Commissioner at a later date that the site poses an imminent and substantial threat to human health or the environment within the meaning of IC 13-25-5. In addition, if it is determined that Applicant withheld or misrepresented information that would be relevant to the Applicant's eligibility, the Commissioner may withdraw from this Agreement.

6. If it is determined that Applicant is eligible for the Indiana Underground Petroleum Storage Tank Excess Liability Fund pursuant to IC 13-23 and all applicable rules, Applicant may apply for reimbursement of the costs of the remediation required by this Agreement. However, Applicant expressly waives the right to claim reimbursement for costs paid to IDEM as Administrative Costs, as described in Section XIX, and for the application fee as provided in IC 13-25-5-2.

7. Applicant shall comply with all applicable state and federal requirements for corrective action. For purposes of determining compliance with applicable state and federal requirements for Leaking Underground Storage Tank (LUST) remediation and for determining eligibility for the Indiana Underground Petroleum Storage Tank Excess Liability Fund, approval of a previously submitted LUST remediation work plan may constitute approval of the Voluntary Remediation Work Plan.

IV. PARTIES BOUND

8. This Agreement shall apply to and be binding upon the Applicant, its officers, directors, principals, employees, agents, successors, subsidiaries and assigns and upon IDEM, its employees, agents and successors. The signatories to this Agreement certify that they are fully authorized to execute and legally bind the Parties they represent. No change in ownership, corporate, or partnership status of the Applicant shall in any way alter its status or responsibilities under this Agreement unless Applicant or IDEM withdraws from this Program.

9. The Applicant shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred. The Applicant shall provide a copy of this Agreement to all contractors, sub-contractors, laboratories, and consultants which are retained to conduct any work performed under this Agreement, within fourteen (14) days after the effective date of this Agreement or within fourteen (14) days of the date of retaining their services.

V. DEFINITIONS

10. "Day" or "calendar day" shall be defined as the 24-hour period between 12:00 A.M. - 12:00 A.M.

11. "Site" shall be used in the manner as defined by IC 13-11-2-203(a); which includes the legal description of the site located at 700 North Olin Avenue, Indianapolis, Marion County, Indiana.

12. All other terms contained in this Agreement shall be used in the manner as defined by IC 13-11-2.

VI. STATEMENT OF PURPOSE

13. This Agreement sets forth the terms and conditions of evaluation and implementation of a Voluntary Remediation Work Plan proposed by the Applicant for the remediation of the release or threatened release of petroleum or hazardous substances from the site.

14. The activities conducted by the Applicant under this Agreement are subject to approval by IDEM. Applicant shall provide all necessary information for a Work Plan for the site. The activities conducted by the Applicant shall be consistent with this Agreement, all applicable laws and regulations and any appropriate guidance documents. Applicant shall employ sound scientific, engineering and construction practices.

VII. WORK TO BE PERFORMED

15. All work to be performed by the Applicant pursuant to this Agreement shall be under the direction and supervision of qualified persons with expertise in hazardous substance or petroleum site investigation and remediation. This individual may or may not be designated by Applicant as Applicant's Project Manager pursuant to Paragraph 24. Prior to the initiation of site work, the Applicant shall notify IDEM, in writing, regarding the name, title, and qualification of such qualified person and of any contractors and/or subcontractors to be used in carrying out the terms of this Agreement.

16. Applicant may, at Applicant's discretion, submit to IDEM an Investigation Work Plan detailing the investigation of the nature and extent of the contamination at the Site. The Investigation Work Plan shall be developed in accordance with any pertinent guidance documents provided by IDEM.

(a) The Investigation Work Plan shall include, but not be limited to, the following project plans: (1) a quality assurance project plan; (2) a sampling and analysis plan; (3) a health and safety plan; (4) a schedule for implementation of all tasks set forth in the Investigation Work Plan; and (5) a data management plan.

(b) IDEM may require Applicant to submit additional or corrected information pursuant to IC 13-25-5-9(b).

(c) The Investigation Work Plan shall be subject to review and evaluation for technical sufficiency by IDEM within approximately sixty (60) calendar days of receipt. IDEM's failure to act on the Investigation Work Plan shall not constitute IDEM's acceptance of the Investigation Work Plan. Acceptance of the Investigation Work Plan by the IDEM Project Manager shall not preclude IDEM from requiring further investigation before final approval of the Voluntary Remediation Work Plan is given.

17. Applicant may, at Applicant's discretion, submit to IDEM an Investigation Report detailing the results of an investigation of the nature and extent of the contamination at the Site. The Investigation Report may be, but need not be, the results of the Investigation Work Plan in 16.

(a) The Investigation Report shall be developed in accordance with any pertinent guidance documents provided by IDEM, including the report format.

(b) IDEM may require Applicant to submit additional or corrected information pursuant to IC 13-25-5-9(b).

(c) The Investigation Report shall be subject to review and evaluation for technical sufficiency by IDEM within approximately sixty (60) calendar days of receipt. IDEM's failure to act on the Investigation Report shall not constitute IDEM's acceptance of the Investigation Report. Acceptance of the Investigation Report by the IDEM Project Manager shall not preclude IDEM from requiring further investigation before final approval of the Voluntary Remediation Work Plan is given.

18. The Applicant shall submit a Voluntary Remediation Work Plan not later than one hundred eighty (180) days after the date this Agreement is executed, or longer if an extension is agreed to by the parties. If Applicant fails to submit the Work Plan within that period the Agreement is voidable at the discretion of IDEM. If IDEM determines the Agreement is void, all protection provided under IC 13-25-5-18(e) is extinguished. In the event this Agreement is voided, the Applicant shall remain responsible to IDEM under Section XIX. The Voluntary Remediation Work Plan must specify the objectives for the remediation of hazardous substances or petroleum that is based on: background levels that occur naturally on the Site; or, an assessment of the risks posed by the hazardous substances or petroleum, taking into consideration the expected future use and measurable risks to human health, natural resources, or the environment. Risk based objectives shall be based on one of the following: 1) levels of hazardous substances and petroleum calculated by IDEM using standard equations and default values for that particular contaminant; 2) levels of hazardous substances and petroleum calculated using site specific data for the default values in IDEM's standard equations; or, 3)

levels of hazardous substances and petroleum developed based on site specific risk assessments that take into account site specific factors.

19. The Voluntary Remediation Work Plan shall include, (1) a detailed description of the investigation conducted by the Applicant in preparing the Voluntary Remediation Work Plan and a description of the work performed by the Applicant to determine the nature and extent of the actual or threatened release, (2) a proposed statement of work to accomplish the remediation in accordance with guidelines established by the department; and (3) the following project plans; (a) a quality assurance project plan; (b) a sampling and analysis plan; (c) a health and safety plan; (d) a community relations plan; (e) a schedule for implementation of all tasks set forth in the Voluntary Remediation Work Plan; and (f) data management plan.

20. IDEM may request Applicant to submit additional or corrected information pursuant to IC 13-25-5-9 (b). The Applicant may comply with the request or withdraw the proposed plan from consideration.

21. The Voluntary Remediation Work Plan shall be subject to review and evaluation by IDEM pursuant to IC 13-25-5-9(a) for approximately sixty (60) days after receipt of the Work Plan. IDEM's failure to act on the Voluntary Remediation Work Plan shall not constitute IDEM's acceptance of the Voluntary Remediation Work Plan. Additionally, the department may request the applicant to supply additional information or corrected information pursuant to IC 13-25-5-9(b). This time period shall not include the time required for public comment under IC 13-25-5-11.

22. The Commissioner shall make a determination concerning the approval, modification and approval, or rejection of the Voluntary Remediation Work Plan within thirty (30) calendar days of close of the public comment period provided for in IC 13-25-5-11 and notify the Applicant as provided in IC 13-25-5-12 or 13-25-5-13.

23. If the Applicant desires to proceed with the implementation of the approved Work Plan, the Applicant must notify the Commissioner in writing not more than 60 days after the Work Plan is approved. After providing such notice, the Applicant shall initiate the work detailed in the Voluntary Remediation Work Plan according to the schedule as set forth in the Commissioner's Notice of Approval. Upon the Commissioner's receipt of notice that the Applicant intends to proceed, the fully approved Voluntary Remediation Work Plan shall be deemed incorporated into and made an enforceable part of this Agreement.

VIII. ADDRESSES FOR ALL CORRESPONDENCE

24. Documents, including reports, approvals, notifications, disapprovals, and other correspondence, to be submitted under this Agreement, may be sent by certified mail, return receipt requested, hand delivery, overnight mail or by courier service to the following addresses or to such addresses as the Applicant or IDEM may designate in writing.

Documents to be submitted to IDEM should be sent to:

Andrea Robertson, Project Manager
Voluntary Cleanup Project Manager
2525 North Shadeland Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015
(317) 308 -3129

Documents to be submitted to the Applicant should be sent to:

Bob Lewis
Genuine Parts Company
2999 Circle 75 Parkway
Atlanta, Georgia 30339

IX. COMPLIANCE WITH APPLICABLE LAWS

25. All work undertaken by the Applicant pursuant to this Agreement shall be performed in compliance with all applicable Federal, state and local laws, ordinances and regulations, including, but not limited to, all Occupational Safety and Health Administration, Department of Transportation and Resource Conservation and Recovery Act regulations. In the event of a conflict in the application of Federal, state, or local laws, ordinances and regulations, the Applicant shall comply with the more/most stringent such laws, ordinances, or regulations, unless provided otherwise in writing by IDEM. Where it is determined that such a permit is required under federal law, Applicant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The Applicant shall be responsible for obtaining all federal permits which are necessary for the performance of any work hereunder.

26. Nothing in this Agreement or in IC 13-25-5 relieves Applicant of its obligations or responsibilities under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., including the duty to meet any permit conditions including, but not limited to, financial responsibility, closure, post-closure or corrective action. Nothing in IC 13-25-5-18(e), the Certificate of Completion, or the Covenant Not To Sue shall prevent IDEM from bringing an enforcement action to compel Applicant to perform closure, post-closure or corrective action regardless of whether the Work Plan addressed the contaminants or property at issue.

27. Unless Applicant fulfills the requirements concerning natural resource damages set forth in Section IX, nothing in this Agreement, the Certificate of Completion, or the Covenant Not To Sue shall be construed to relieve the Applicant of any natural resource damage liability arising from the contaminants even if addressed by the Remediation Work Plan under the following authorities: 42 U.S.C.A. § 9601 et seq. (CERCLA); 33 U.S.C.A. §2701 et seq.; Indiana

Code 13-25-4-8; or, any common law theories of public trust doctrine in Indiana. Applicant agrees that the period from the Commissioner's acceptance of this Agreement until the Agreement is terminated or satisfied shall toll all statutes of limitations applicable to the contaminants addressed by the Voluntary Remediation Work Plan.

28. A Certificate of Completion and Covenant Not To Sue issued under Section XXV shall not release Applicant from liability for claims for natural resources damages unless Applicant devises and carries out a plan for restoration, rehabilitation, replacement or acquisition of equivalent natural resources or pays to the State the value of the natural resources, as determined by the Trustees. The plan shall be developed and implemented as part of the Remediation Work Plan. If Applicant wishes to address natural resources damages in the remediation work plan, Applicant shall so indicate in the notice to the State and Federal Natural Resources Trustees per Section X.

29. After receiving notice of Applicant's desire to address natural resources damages, the Natural Resources Trustees shall perform the pre-assessment screen for injury to, destruction of, or loss of natural resources. The Applicant expressly agrees to reimburse IDEM for any and all costs incurred by either IDEM or the Department of Natural Resources in performing the pre-assessment screen. The Applicant will perform the assessment of damages based on the pre-assessment screen. This Agreement and the Covenant Not To Sue issued hereunder does not alter the liability of Applicant or any other person to the federal government for claims of natural resource damages under any federal law.

X. INTERAGENCY COORDINATION

30. The following agencies may have an interest in the Work Plan because of coexisting or contiguous natural resources or concurrent jurisdiction over the Site:

1. Indiana Department of Natural Resources
Fish & Wildlife Division Rm-W273
402 W. Washington, Indianapolis, IN 46204
(317) 232-4080; Fax (317) 233-4579
2. Indiana State Department of Health
Epidemiology Resource Center, Rm 234W
1330 W. Michigan, Indianapolis, IN 46202
3. Fire Prevention and Building Safety Commission
Office of the Fire Marshal, Rm E-241
402 W. Washington, Indianapolis, IN 46204
(317) 232-2222; Fax (317) 233-0307

31. The Applicant shall provide notice to these agencies of the submission of the Remediation Work Plan by sending them a copy of the Work Plan Executive Summary and Site Map as well as the name of the Project Managers for IDEM and Applicant. Any of the above

named agencies that wish to review the Work Plan shall be given an opportunity by the Commissioner to comment during the time that IDEM is reviewing the Plan. The Commissioner shall consider any comments from state agencies that are received at least thirty (30) days prior to the deadline established in this Agreement for approval or rejection of the Work Plan. If Applicant wishes to address natural resources damages in the Remediation Work Plan, Applicant shall so notify the State and Federal Natural Resources Trustees within 30 days of the effective date of this Agreement.

XI. DESIGNATED PROJECT MANAGER

32. On or before the effective date of this Agreement, IDEM and the Applicant shall each designate a Project Manager. Each Project Manager shall be responsible for overseeing the implementation of this Agreement. IDEM Project Manager will be the IDEM designated representative at the site. To the maximum extent possible, communications between the Applicant and IDEM and all documents (including reports, approvals, and other correspondence) concerning the activities performed pursuant to the terms and conditions of this Agreement shall be directed through the Project Managers. During implementation of this Agreement, the Project Managers shall, whenever possible, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues. Each Party has the right to change its respective Project Manager by notifying the other Party in writing in a timely fashion prior to the change.

33. IDEM Project Manager shall have the authority to halt, conduct, or direct any work required by this Agreement and/or any response actions or portions thereof when conditions may present an imminent and substantial threat to human health or the environment. In the event that IDEM Project Manager halts work pursuant to this paragraph, the schedule of work described in the Work Plan and this Agreement shall be modified accordingly or IDEM may withdraw its approval of the Work Plan pursuant to Section XVIII.

34. The absence of the Applicant's or IDEM's Project Manager from the site shall not be cause for the stoppage of work. The Applicant's Project Manager or his supervisor shall reasonably be available by telephone while the field investigation is being performed. The Applicant's Project Manager shall designate a person to be in charge who will be available on-site when field work is being performed.

XII. QUALITY ASSURANCE

35. The Applicant shall use quality assurance, quality control, and chain of custody procedures in accordance with the Quality Assurance Project Plan approved for use by IDEM, throughout any Work Plan sample collection and analysis activities under this Agreement, unless IDEM agrees otherwise.

36. Applicant shall provide IDEM Project Manager with reasonable advance notice of all sampling and analysis as detailed in the Work Plan. To provide quality assurance and maintain quality control, the Applicant shall:

- (a) allow IDEM personnel and/or IDEM authorized representatives reasonable access to laboratories and personnel utilized by the Applicant for analyses;
- (b) ensure that all sampling and analyses are performed according to U.S. EPA methods, the approved Quality Assurance Project Plan, or other methods deemed satisfactory by IDEM;
- (c) ensure that any laboratories used by the Applicant for analyses participate in a documented Quality Assurance/Quality Control program that complies with U.S. EPA guidance documents. As part of such a program, and upon request by IDEM, such laboratories shall perform analyses of samples provided by IDEM to demonstrate the quality of analytical data for each such laboratory; and,
- (d) perform confirmatory sampling for all contaminants and all media for which a Certificate of Completion and Covenant Not To Sue are sought. Applicant shall specify in the Remediation Work Plan the means of taking confirmatory samples and notify IDEM personnel a minimum of fourteen (14) days prior to taking confirmatory samples.

37. In the event any laboratory fails to perform the activities required above, IDEM reserves the right to reject any data not gathered pursuant to the requirements listed above, and to require that the Applicant utilize a different laboratory.

XIII. SAMPLING AND DATA/DOCUMENT AVAILABILITY

38. The Applicant shall, upon request, make the results of all sampling, including raw data, and/or tests or other data generated by the Applicant, or on the Applicant's behalf, available to IDEM. IDEM will make available to the Applicant the quality assured results of sampling and/or tests or other data similarly generated by IDEM.

39. At the request of IDEM, the Applicant shall provide split or duplicate samples to IDEM and/or its authorized representative, of any samples collected by the Applicant pursuant to the implementation of this Agreement. At the request of the Applicant, IDEM or its authorized representative, shall provide split or duplicate samples to the Applicant of any samples collected by IDEM and/or its authorized representative pursuant to the implementation of this Agreement. Each Party shall notify the other in advance of any sample collection activity.

XIV. ACCESS

40. To the extent that the Site or other areas where work is to be performed hereunder are presently owned or controlled by parties other than those bound by this Agreement, the Applicant shall obtain access agreements from the present owners. Any such access agreements shall be

incorporated by reference into this Agreement. Such agreements shall provide access for IDEM and authorized representatives of IDEM, as specified below. In the event that such access agreements are not obtained, the Applicant shall so notify IDEM, which may at its discretion assist the Applicant in gaining access. IDEM reserves the right to withdraw or modify this Agreement should the Applicant's inability to gain access to the Site or other areas materially affect the Applicant's ability to perform the work required herein.

41. The Applicant shall provide authorized representatives of IDEM access to the site and other areas where work is to be performed at all reasonable times. Such access shall be related solely to the work being performed on the Site and shall include, but not be limited to: inspecting records, operating logs and contracts related to the site; reviewing the progress of the Applicant in carrying out the terms of this Agreement; conducting such tests, inspections, and sampling as IDEM may deem necessary; using a camera, sound recording, or other documentary type equipment for field activities; and, verifying the data submitted to IDEM by the Applicant hereunder. The Applicant shall permit IDEM's authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which pertain to this Agreement and over which the Applicant exercises control. All persons with access to the site pursuant to this Agreement shall comply with approved health and safety plans.

42. Nothing herein shall be construed as restricting the inspection or access authority of IDEM under any law or regulation.

XV. RECORD PRESERVATION

43. The Applicant agrees to preserve, during the pendency of this Agreement and for a minimum of six (6) years after its termination, all records and documents in the Applicant's possession or in the possession of its employees, agents, accountants, contractors, which relate in any way to the subject matters covered by this Agreement. Upon request by IDEM, the Applicant shall make available to IDEM such records, or copies of any such records. After this six year period, the Applicant shall notify IDEM in writing thirty (30) calendar days prior to the destruction of any such documents. At that time, if IDEM requests that some or all documents be preserved for a longer period of time, the Applicant shall provide IDEM with the documents that IDEM wishes to preserve.

44. Applicant may assert a confidentiality claim, pursuant to applicable laws and rules IC 13-14-11-1 thru IC 13-14-11-5 with respect to any or all of the information requested or submitted pursuant to this Agreement. Any assertion of confidentiality shall be adequately substantiated by Applicant when the assertion is made. Information determined to be confidential by IDEM shall be disclosed only to the extent permitted by IC 13-14-11-1 and IC 5-14-3. If no such confidentiality claim accompanies the information when it is submitted to IDEM, it may be made available to the public by IDEM without further notice to the Applicant. Applicant agrees not to assert any confidentiality claim with regard to any physical or analytical data.

XVI. DISPUTE RESOLUTION

45. This section (Dispute Resolution) shall apply to any dispute arising under any section of this Agreement, unless specifically excepted.

46. The Parties shall use their best efforts to, in good faith, resolve all disputes or differences of opinion informally. If, however, disputes arise concerning this Agreement which the Parties are unable to resolve informally, the Applicant may present written notice of such dispute to IDEM and set forth specific points of dispute and the position of the Applicant. This written notice shall be submitted no later than five (5) calendar days after the Applicant discovers the Project Managers are unable to resolve the dispute. The Applicant's Project Manager will notify IDEM's Project Manager immediately by phone or other appropriate method of communication, prior to written notice, when s/he believes the Parties are unable to resolve a dispute.

47. Within ten (10) calendar days of receipt of such a written notice, IDEM shall provide a written response to the Applicant setting forth its position and the basis therefore. During the five (5) calendar days following the receipt of the response, the Parties shall attempt to negotiate in good faith a resolution of their differences.

48. Following the expiration of the time periods described in the immediately preceding paragraph, if IDEM concurs with the position of the Applicant, the Applicant shall be notified in writing and this Agreement shall be modified to include any necessary extensions of time or variances of work. If IDEM does not concur with the position of the Applicant, IDEM, through the Commissioner or his/her designate, shall make a determination regarding the dispute, based upon and consistent with the terms of this Agreement, and shall provide written determination of such resolution to the Applicant. In the event that such determination is not acceptable to either Party, the dispute may be submitted to an impartial third Party for mediation in the following manner:

(a) The Parties shall select a mediator from the Indiana Supreme Court's approved list of mediators as established by the Indiana Rules of Alternative Dispute Resolution (ADR Rules) within five (5) calendar days of Applicant's receipt of the Commissioner's determination. In the event such a list does not exist or does not contain mediators which the Parties agree are qualified to mediate environmental disputes, the Parties shall use a mutually acceptable list and select a mediator within five (5) calendar days of compilation of such other mutually acceptable list. In addition to the qualifications required by the ADR Rules, the mediator shall have experience in environmental issues.

(1) The dispute shall be initially submitted to the mediator via a written request for dispute resolution through mediation; the written request shall be issued within 10 days after notification of the Parties of IDEM's final determination of the dispute, as provided by paragraph 48(a) of this section. The request for assistance shall include the written determination of the Commissioner

issued pursuant to paragraph 48(a) and the documents specified in paragraphs 38 and 39 of this section. A copy of the written request shall be delivered to the other Parties at the time the request is made.

(2) The Party which submitted the dispute to mediation may make a written submission in support of its position to the mediator within ten (10) days of the mediator's selection, and any other Party may make a written response in support of its position within seven (7) days thereafter. The mediator shall immediately thereafter contact all Parties and determine the course of the mediation, including scheduling any meetings deemed necessary.

(3) The mediation process shall be conducted in accordance with Indiana Rules of Alternative Dispute Resolution in any aspect not covered by this Agreement.

(4) The mediator and the Parties shall proceed with all due speed to resolve the dispute.

(5) All communications, whether oral or written, between the mediator and the Parties, shall be kept confidential in accordance with the Indiana Rules for Alternative Dispute Resolution, Rule 2.12.

49. If either Party determines or the mediator declares that the dispute cannot be resolved through the mediation process, the Parties retain all rights under the Indiana Administrative Orders and Procedures Act, IC 4-21.5.

50. Until the dispute is resolved, any actions concerning that element of work in dispute shall be halted. The resolution of the dispute shall be incorporated into the Work Plan and made an enforceable part thereof. The time schedule for the work in dispute shall be extended by the amount of time needed for resolution. Elements of work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the Work Plan.

51. Elements of work and any actions required as a result of such dispute resolution shall immediately be incorporated, if necessary, into the appropriate plan or procedure, and into this Agreement. The Applicant shall proceed with all remaining work according to the modified plan or procedure.

XVII. FORCE MAJEURE

52. The Applicant shall cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. For purposes of this Agreement, a force majeure is an event arising from circumstances beyond the reasonable control of the Applicant which delays performance of any obligations required by this Agreement. Increases of costs shall not be considered an event of force majeure.

53. The Applicant shall notify IDEM by calling within three (3) calendar days and by writing no later than seven (7) calendar days after any event which the Applicant contends is a force majeure. Such notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by the Applicant to minimize the delay, and the timetable by which these measures will be implemented. The Applicant shall have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure shall be made by the Assistant Commissioner, or his/her designate, of the Office of Land Quality. Said decision shall be immediately communicated to Applicant.

54. If a delay is attributable to a force majeure, the time period for performance under this Agreement shall be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.

XVIII. RESERVATION OF RIGHTS

55. IDEM and Applicant reserve all rights and defenses they may have pursuant to any available legal authority unless expressly waived herein.

56. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the Parties may have against any person, firm, partnership or corporation, not a Party to this Agreement for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous waste, contaminants, or pollutants at, to, or from the site. The Parties to this Agreement expressly reserve all rights, claims, demands, and causes of action they have against any and all other persons and entities who are not Parties to this Agreement, and as to each other for matters not covered hereby.

57. The Applicant reserves the right to seek contribution, indemnity, or any other available remedy against any person other than IDEM found to be responsible or liable for contributions, indemnity, or otherwise for any amounts which have been or will be expended by the Applicant in connection with the site.

58. IDEM reserves the right to bring an action, including an administrative action, against Applicant for any violations of statutes or regulations except for the specific violations or releases that are being remediated in the Work Plan.

59. Pursuant to IC 13-25-5, IDEM reserves the right to withdraw its approval of the Work Plan at any time during the implementation of the Work Plan if:

- (a) IDEM determines that the Applicant has failed to substantially comply with the terms and conditions of this Agreement or the Work Plan;

(b) the Applicant declines to implement the Work Plan after being notified of its approval by IDEM; or

(c) IDEM determines that a hazardous substance or petroleum has become an imminent or substantial threat to human health or the environment.

Upon withdrawal of its approval, this Agreement shall be terminated and IDEM reserves the right to bring any action to enforce any statute or regulation under Title 13 of the Indiana Code including an action regarding the violations or releases that were the subject of this Agreement.

60. IDEM acknowledges that, pursuant to IC 13-25-5-20(b), Applicant, upon receipt of the Certificate of Completion, is not liable for claims for contribution concerning matters addressed in the Voluntary Remediation Work Plan.

XIX. ADMINISTRATIVE COSTS

61. Applicant agrees to reimburse IDEM for all of its administrative costs associated with implementation of this agreement. Attachment A contains an itemized list of estimated costs that IDEM expects to incur under this Agreement. This estimate is not intended to bind IDEM to a maximum cost it is entitled to bill the Applicant under this Agreement. The estimate is merely provided as a courtesy to the Applicant.

62. IDEM shall routinely send an accounting of IDEM's administrative costs to Applicant. The accounting shall itemize all costs incurred by IDEM. Applicant shall pay these costs within thirty (30) days of receipt of the accounting. Interest shall accrue at a rate of one half percent (1/2 %) per month of delinquency.

63. Checks should be made payable to the Voluntary Remediation Fund and be mailed along with a transmittal letter stating the site name and address to the Indiana Department of Environmental Management; Attention: Cashier; 100 North Senate Avenue; P.O. Box 7060; Indianapolis, Indiana 46207-7060. In addition, a copy of the check and transmittal letter shall be mailed to IDEM Project Manager.

64. Administrative costs shall include all reasonable costs, direct and indirect, of IDEM's oversight arrangement for this Agreement and the Work Plan including, but not limited to, time, salary, benefits and travel costs of IDEM personnel and its contractors and associated indirect costs, contractor costs, compliance monitoring, including the collection and analysis of split or duplicate samples, inspection of Applicant's activities, site visits, discussions regarding disputes that may arise as a result of this Agreement, review and approval or disapproval of reports, and the costs of dispute resolution. Such costs shall also include the costs incurred by IDEM in having a qualified person oversee the conduct of the Applicant under this Agreement and the Work Plan. Administrative costs shall include an additional amount not to exceed ten percent (10%). As per IC 13-25-5-8(a) 9, IDEM considers that this additional amount to be necessary for the effective and efficient implementation of the Voluntary Remediation Program and will ensure that IDEM meets its obligations and all other expenses not covered above. Administrative costs

outstanding at the time of issuing the Certificate of Completion and the Covenant Not To Sue must be paid before those documents will be issued by IDEM. Costs incurred prior to and after satisfaction of this agreement must be paid regardless of the issuance of the Certificate of Completion and the Covenant Not To Sue.

65. In the event that this agreement is terminated for any reason, Applicant agrees to reimburse IDEM for all of its administrative costs reasonably incurred to the time of termination. IDEM agrees to reimburse Applicant any unused portion of the application fee in accordance with IC 13-25-5-8 (b) (2).

XX. COMMUNITY RELATIONS

66. The Applicant will cooperate with IDEM in providing information about the Work Plan to the public. IDEM will give the Applicant reasonable advance notice of and may require the Applicant's or its agent's attendance at any such public meetings it may hold or sponsor at times and locations which are agreed upon by IDEM and the Applicant.

67. Before the Commissioner may approve or disapprove the Work Plan, the Commissioner shall provide thirty (30) days for public comment pursuant to IC 13-25-5-11.

68. A public information file, containing the Remediation Work Plan, shall be maintained by IDEM during the thirty (30) day Public Comment period at a public repository near the site. Applicant shall provide the location of said public place.

XXI. NOTICE OF BANKRUPTCY

69. As soon as Applicant has knowledge of its intention to file bankruptcy or no later than 7 days prior to the actual filing of a voluntary or involuntary bankruptcy petition, Applicant shall notify IDEM of its intention to file a bankruptcy petition.

XXII. INDEMNIFICATION

70. The Applicant agrees to indemnify and hold the State of Indiana, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from, or on account of, acts or omissions of the Applicant, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Agreement.

XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

71. The effective date of this Agreement shall be the date on which this Agreement is signed by the Commissioner of IDEM.

72. This Agreement may be amended by mutual agreement of IDEM and the Applicant. Amendments shall be in writing and shall be effective when signed by the Commissioner of IDEM.

XXIV. EXTENSIONS OF TIME PERIODS

73. Any written response shall be deemed timely performed if hand delivered or postmarked by the last day of any time period prescribed herein. Whenever a Party has the right or is required to do some act or make some response within a prescribed period after the service of a notice or other paper on it and the notice or paper is served upon it by mail, three (3) days shall be added to the prescribed period.

74. Whenever any Party is called upon to respond or otherwise act in a certain number of days, and if the final day occurs on a Saturday, Sunday or legal holiday (whether state or national), such time limitation shall automatically extend to the next business day after such Saturday, Sunday or holiday.

75. Any time periods specified in this Agreement may be extended only by agreement of the Parties.

XXV. TERMINATION AND SATISFACTION

76. The provisions of this Agreement shall be satisfied when IDEM gives the Applicant written notice in the form of a Certificate of Completion that the Applicant has demonstrated to IDEM's satisfaction that all of the terms of this Agreement have been completed, including the selection and implementation of a remedial action. The Parties understand that IDEM will issue the Certificate of Completion to the Applicant only. This section shall exclude the provisions of Section XV, Record Preservation, and Section XIX, Administrative Costs.

77. Nothing in this Agreement shall restrict the State of Indiana from seeking other appropriate relief to protect human health or the environment from pollution or contamination at or from this site not remediated in accordance with this Agreement.

78. After IDEM issues the Certificate of Completion, the Governor's Office shall provide Applicant with a Covenant Not To Sue pursuant to IC 13-25-5-18. The Covenant Not To Sue shall contain a listing of the specific work and contaminants covered. The Parties understand that the Governor's Office will issue the Covenant Not To Sue to the Applicant only.

XXVI. PRECEDENCE OF AGREEMENT

79. In the event that conflict arises among the terms and conditions of this Agreement, the Statement of Work, or the approved Work Plan, this Agreement shall govern and the terms and conditions hereunder shall determine the Parties' rights and responsibilities.

TECHNICAL RECOMMENDATION:

By: Peggy Dorsey

Peggy Dorsey
Section Chief
Voluntary Remediation Program

Date: Jan 6, 2000

APPROVED FOR LEGALITY AND FORM:

By: Thomas W. Baker

Thomas W. Baker
Attorney
Office of Legal Counsel
IDEM

Date: JAN 7, 2000

R. K. Reinkemyer
Genuine Parts Company

Scott C. Smith
Attorney for Applicant (type)

By: RK Reinkemyer

By: Scott C. Smith

Title: Vice President - Operations

Title: VICE PRESIDENT & CORPORATE COUNSEL

Date: 12-21-99

Date: 12-21-99

Approved and adopted by the Indiana Department of Environmental Management

this 11 day of January, 19 2000.

Mary Beth Tucky
Mary Beth Tucky, Assistant Commissioner
Office of Land Quality

ATTACHMENT A
NON-BINDING COST ESTIMATE
IDEM SITE #6991004

The scope of this project is to review and provide oversight for the voluntary remediation of the Former Allison Engine Company, Plant 10 facility in Indianapolis, Indiana. These services will include the following:

Phase II Site Investigation Report Review	\$3,000.00
Implementation Oversight	\$2,000.00
Remediation Work Plan Review and Approval	\$4,000.00
Completion Determination	<u>\$6,000.00</u>
Total	\$15,000.00

